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ABSTRACT

This paper offers some reflections on reconstructing the role of school law instruction in colleges of education, and specifically in administrator preparation programs. Three aspects of a school law course are discussed as they relate to the typical path of educational administrators' academic preparation. The "translational dimension" of school law refers to the original function of school law courses, which is simply to instruct educators in the legal concepts necessary to discharge their duties, so that they will not violate the law from ignorance. Typical school law courses involve an exposition of important case law to show the variability of legal outcomes, on the assumption that educators will better serve professionally if they comprehend the basic nature and application of legal principles and the adjudicative process. This approach, however, is seen as insufficient because it looks at law in isolation from other types of knowledge about educational organizations. An integrative approach which views legal decisions prismatically from the perspective of scholarship in several different disciplines is, therefore, recommended. For example, insights from sociological analysis and management theory could be brought to bear on legal issues such as school desegregation, teacher dismissal, collective bargaining, and teacher student relations. The third aspect of school law courses is the foundational aspect, which addresses the historical precedence and development of legal decisions in education. Another foundational perspective that can be highlighted in school law is the ethical foundation--the relationship between school law and justice or morality, and the moral ramifications of schooling and school management. The ultimate measure of a school law course, however, is its contribution to the overall intellectual training of school administrators. (TE)

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Multiple Dimensions of School Law Courses

by

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Multiple Dimensions of School Law Courses

A law-trained person[1] who works exclusively in an education college runs the risk of both intellectual isolation and becoming an all purpose "law and . . ." expounder (e.g., law and teachers or school psychologists or handicapped students). As law touches schooling at so many points,[2] school law experts can be drawn into myriad activities where disclosing the law's impact on some educational policy or practice matter is their core responsibility. Thus, although most school law specialists are housed in administration-oriented programs,[3] they may contribute formally or informally to many programs, bringing legal imperatives to the attention of a wide range of prospective professionals.[4] With frequent calls to their expertise, which normally will be monopolistic in an education college, school law specialists can be active participants in the training mission of their colleges.

Their role in the intellectual life of an education college may be another matter altogether. To the extent that school law specialists are dominated by their legal perspective (and if one is a lawyer, such domination may be inescapable[5]) and both teach and write from legal materials and issues, they may not be fully integrated into their collegial and intellectual environment. While the mechanisms of due process are important in structuring school discipline systems or in teaching about classroom management, those mechanisms are small pieces of such complex domains of knowledge, and barring the complete reification of

law, should be ancillary to "core questions," both for teaching and research. My point is that in many, perhaps most interesting and important educational issues, the school law component may be necessary, but wildly insufficient. The image that comes to mind is from "The Love Song of J. Alfred Prufrock":

> No. I am not Prince Hamlet, nor was meant to be,
> Am an attendant lord, one that will do
> To swell a progress, start a scene or two,
> Advise the prince; no doubt an easy tool,
> Deferential, glad to be of use,
> Politic, cautious and meticulous,
> Full of high sentence, but a bit obtuse;
> At times, indeed, almost ridiculous--
> Almost, at times, the Fool.[6]

The anomaly is that school law courses are apparently quite well received in most administration programs. Students may be daunted, but they are also curious, stimulated and gratified. Moreover, although recommendations for change in administrative training (indeed, in all educators' training) suggest a wide variety of approaches and content that require curricular renovation or replacement, school law remains a part of almost all transformed programs.[7] Thus, education law is firmly embedded in education colleges, most frequently in administrative preparation. On the other hand, as professional literature often reflects, educators know law because they must, and in schools, it is merely a beast to be kept at bay. The "effects" of legalisms are generally estimated quite harshly by educators.[8] While school law may be intellectually challenging for faculty, and derive from a system and process that they value deeply, their students may well hold law and lawyers responsible for a

substantial portion of the deterioration of western civilization.[9] At the least, a school law teacher may have the sensation of teaching a course about a large number of pathologies that all reasonable people seek to avoid. One can argue the social, moral or even organizational virtues of due process hearings, but one's students likely harbor the practical knowledge that the best due process hearing is the hearing avoided.

This paper is intended, then, to offer some reflections on reconstructing the role of school law courses by conceptualizing them in a more complex and multidimensional manner. That is, I wish to suggest several purposes for a school law course that may allow one to view school law in a fashion more integrative to the mission of education colleges. While discussing those purposes, I will also suggest ways that a particular purpose may be realized in the design and teaching of school law courses. My perspective will be drawn from school law as taught in administrative training programs, but the logic should be applicable to law courses offered in other programs. The paper discusses three dimensions of a school law course, and then relates this view of school law to the typical path of educational administrators' academic preparation.

The Translational Dimension

Unlike education law itself, there is no extant history of school law pedagogy.[10] However, there seems little doubt that the "translational" function underlies the emergence and

subsequent development of school law courses. In 1957, Remmlein published the School Law Test, which was widely used by instructors for about a decade, shaping early courses in the field.[11] The Test was the embodiment of this dimension, designed on the premise that educators must learn certain things regarding law to discharge adequately their jobs. The school law course would instruct educators, particularly managers, in this set of necessary concepts. The most evident course goal would be that educators not violate the law from ignorance.

As education has always been, in the words of Gellhorn and Boyer, a "regulated industry,"[12] it is unsurprising that Garber identifies a school law course at the University of Chicago as early as 1922.[13] When judicial scrutiny of public education intensified after Brown v. Board of Education,[14] the areas of school operations touched or directly shaped by judicial rulings or statutory prescription proliferated. At present, school law is essentially de rigeur, in many states tied to achieving administrative certification.[15]

Two major changes have occurred during the last few decades in school law teaching. Both Garber and Remmlein point out that school law originally was taught by educators, rather than lawyers, and focused primarily on statutes rather than case law.[16] Although lawyers have not completely displaced educators as school law instructors, a decided emphasis on case law in the field may well reflect that the lawyer's world view now defines a proper school law course.[17] The prevalent texts in school law

are, by and large, case law oriented and virtually all have a significant number of edited cases, normally accompanied by authorial commentary.[18]

Teaching school law through an exposition of important cases would replicate the design of a typical law school course. Using cases allows the instructor to show the variability of legal outcomes through multiple cases or factually varied hypotheticals. Also, student participation is easily elicited through some measure of socratic questioning. As for prospective administrators, cases have an objective correlative; much of administrative life is responding, either ad hoc or through application of policy to context, to various conflicts which arrive in an unpredictable, but continuous flow.[19] Thus, although there is some feeling among students that school law should be more "practical,"[20] that criticism is considerably more muted for law than for organization and management classes.

This enduring dimension of school law courses is a comforting one for an university academician. It is expertise-based, and the instructor usually has virtually all the expertise. The major dilemma, perhaps, is answering classroom questions grounded in students' professional experiences (i.e., seeking a prediction for the outcome of some local events). At such times, the uncertainty of legal processes, so frustrating and sometimes disillusioning to students, can be a relief to the instructor.[21]

As this function of school law course appears so dominant, I

need not elaborate greatly on it. It was my experience in school law, and, for many students, it is the beginning and end of the course's purpose. The instrumentality of this dimension also captures the perspective that educators will better serve professionally if they comprehend the basic nature and application of legal principles, and the adjudicative process (the wages of "sin").[22] I have two observations, based on a review of many of the texts in school law.[23] First, they duplicate, in varying degrees, a tendency shared by legal education: extensive focus on case law to the diminishment of statutory law.[24] Moreover, to the extent that appellate cases are emphasized, the occasional, apocalyptic consequences of law displace its routine, even pervasive presence in schools. This case law focus may be an artifact of textbook market realities. That is, given the substantial interstate variability of statutes and administrative regulations, case law (particularly federal, constitutional cases) travels much better across state boundaries. However, if early school law courses overcommitted to prosaic statute reading,[25] modern courses may ironically slight these sources of law.[26] Instructors can easily mitigate this difficulty by creating supplemental materials of both relevant statutes and regulations and important interpretative state cases.[27]

Secondly, this dimension of school law is one students can comprehend as valuable (or "practical"), and one that normally they want. To unpack a complex term such as due process and

track its meaning across such contexts as student discipline and teacher dismissal is intrinsically useful. Moreover, even procedural due process is not so self evident that the instruction is redundant, so much the more so with equal protection, church and state, and other commodious concepts. Teaching clearly and sufficiently this content to a lay audience, particularly translating it to operational policy is challenging and usually enjoyable for the instructor. To do so well would seem to provide an adequate rationale or justification for a school law course.

Integration or Synthesis

If the content and structure of school law texts predicts course content, most courses have a translational dimension, with a case by case, adjudicatory focus, virtually to the exclusion of all else. My concern is that looking at law in isolation from all the other types of knowledge about educational organizations is insufficient, a concern voiced by others regarding research in school law. Zirkel and Yudof, the latter for almost a decade, have been promoting research on schooling and law that expands the traditional analytical reviews of cases and doctrine.[28] While such scholarship is not abundant, it certainly exists and should be integrated into the content of law courses. Moreover, other scholarship which is not tied directly to empirical or interdisciplinary study of law and education can be fruitfully integrated into school law courses. The ultimate goal is to treat the idea of a "case" as multifaceted; whatever complex

problem has precipitated an adversarial confrontation can be viewed prismatically, with several disciplines or perspectives adding insight to the student's understanding.

For instance, when researchers first studied noncompliance with Supreme Court rulings on school prayer or desegregation cases, there was a tone of surprise in their writing.[29] Now, both impact analysis and implementation study are fields of specialization, generating conceptual frameworks and data rich studies.[30] Much of the work is done with aggregate data, which is not always easy to use with a law case, but such research strands are essential to prevent a decoupling of legal processes from human contexts. Law does have effects, but not always what courts order or legislatures expect. Moreover, local effects of a given case may be outlier phenomena,[31] implying more certainty or inevitability to legal effects than likely exists.

Students tend to view law as more absolute than it really is; indeed, they often cherish a court's "list" ruling, enumerating a set of necessary requisites. This reaction, the risk averse response,[32] presumably stems from a need to reduce ambiguity and to avoid the prospect of a "violation of the law." At the very least, such a perspective may suggest more exogenous control over a school manager's life than is necessary or desirable.[33] Thus, law cases may contribute to a perception of administrators as hemmed in by rules and largely devoid of discretionary authority. One might argue that the modal view of schools as organizations extrapolated from school law casebooks

is a bureaucratic and adversarial environment.[34] Such a view appears largely at variance with much contemporary scholarship on schools.[35]

One area where richer thinking about schools as workplaces and organizations should infuse school law is manager-teacher relations. Looking at teacher dismissal cases one by one, it is possible to conclude that teachers are largely circumscribed in their teaching autonomy by intrusive boards and managers. Such a view is discrepant with schools seen as loosely coupled organizations.[36] Of course, as Willower and Stetter have pointed out, schools have never been so loosely joined, even on instruction, as some have implied; principals have always served as "threshold guardians."[37] Case law, however, focuses on these violations at the periphery, and brings them to the organizational center, if only by failing to note the outlier quality of all cases involving teacher dismissal.

Dismissal cases also tend to reinforce an image of managers as dominant and authoritative in schools, and of teachers as a controlled and monitored closely group, again antithetical to the sociology of teaching.[38] As Bridges' recent study illustrates, dismissals, particularly for incompetence, normally involve easy cases.[39] However, new policies involving "teacher accountability" and instructional leadership may create for principals direct responsibilities for merely mediocre teachers, imposing a mandate to improve their instructional capabilities or to dismiss them.[40] There are good anecdotal studies which

illustrate the nature and scope of commitment that personnel improvement involves, as well as the emotional complexity and cost of such work.[41] Mintzberg-type studies of principal work reflect the tradition of principals' avoidance of such work,[42] and with reason, as teaching is a complex and ambiguous task, with distinctive managerial implications.[43]

This same teacher-principal dynamic is relevant to teaching collective bargaining cases. Teaching about collective bargaining through cases alone conveys two important meanings: schools are adversarial places where punctilious adherence to the contract is enforced, and that principals are contract managers, with room for decision making and discretion largely eroded. The former proposition would ignore substantial interschool variability, captured well by the work of Johnson.[44] The latter perspective is at variance with a substantial volume of literature on the principalship.[45] While collective bargaining, like other policy processes, can lead to centralizing many decisions,[46] Borman and Spring's illustrations of "discretionary insubordination" by principals in an urban district reemphasizes Johnson's point: stamping out interbuilding variance is a chimera.[47] Scope of bargaining, a frequent topic for casebooks, is important, particularly in viewing the intrasystem dynamic of group power, but judicially preserved "managerial prerogatives" may go unused, and bargainable topics may be frozen as norms in some buildings. Variant outcomes are obviously essential to understanding the organizational meanings of collective

bargaining law and processes.

Interesting, multidisciplinary work exists for student relations issues,[48] as well as for system level governance and policy questions.[49] Casebooks are inherently atomistic, a potpourri of cases illustrating the process and substance of law. Generalization is often provided by authors' commentary, but the law is viewed apart from the complex, interesting realities of schools as organizations. A "case" can be used in management courses, (and is increasingly common in principalship and other school management texts) and an integrative approach in school law to the concept of a case would illustrate the dynamic quality of law and educational practice.

This perspective has several pedagogical implications. One reason school law courses are popular, I believe, is that they involve theory and application. Contextual facts are applied to principles of law to reach conclusions. The process is complex and challenging and a practical use of theory. A problem is that as challenging as these analyses are, they are too simple. They ignore knowledge about teaching, learning and schools. They prefer closure and prescription to tentativeness and discretion. Tying a legal dilemma to the rich complexness of its organizational context demonstrates that much of school law, at the operational level, is negotiative and interpretive. Law is part of the negotiated order, no less tentative and variable than all of that order.

To import these dimensions into school law, one needs a more

integrated text. The paradigm is Kirp and Yudof's Educational Policy and the Law,[50] a text apparently not widely used in school law courses.[51] Alternatively, the instructor can feed the information into class discussions, relying on students' coursework in management classes to create the knowledge structures. The law professor then can elicit the knowledge, making bridges to other literatures and creating a more holistic vision of various topics. The latter approach might seem more appropriate, as less redundant of coursework in other courses, but is, of course, more taxing on the pedagogical capabilities of the instructor.[52]

Perhaps more obvious are coverage dilemmas. School law courses are normally surveys. As most students will get only one course, texts cover everything from open meetings to desegregation. Most texts appear wholly impossible to cover in a single semester or quarter. Thus, any incremental demands imply "zero sum" decision making. It may be that law courses are endemically too catholic. Attempting to teach an audience of preservice building administrators about the abortive school finance revolution or bidding procedures may be an indulgence. The waterfront will always be too wide to cover in a single course, and depth is a casualty to breadth. Given both continuing inservice training and information,[53] and the transitory nature of all legal knowledge (except adjudicative process perhaps), breadth is a vice, rather than a virtue, particularly as the "set of rules" perspective that can accompany

instructional time pressures[54] is discordant with the whirl of factors that intrude on school-based decisions. At the least, content selection can be driven by class population (i.e., most administration students in law courses are preservice, and building level issues will be more immediately relevant).

Justice Frankfurter once asked, with regard to certain Supreme Court decisions involving antitrust, "Does anyone know . . . where we can go to find light on what the practical consequences of these decisions have been?"[55] A diverse literature helps to answer that question in school law issues, and, if the exhortations of Yudof, Zirkel and others are efficacious, that literature will continue to grow. It would seem important that school law cases not be interpreted, then, in the social vacuum often characteristic of traditional legal analysis.[56]

Foundations

To some extent, the foundational aspect of school law courses is inevitable, an epiphenomenon of a precedential system. Case law emerges in a developmental manner, with occasional epochal moments such as Brown v. Board of Education. Most casebooks will commingle older cases with current precedent, enabling instructors to illustrate both the general stability of legal doctrine and the capacity of courts and legislators to effect breaks with tradition. Thus, even in a startling case such as Tinker v. Des Moines, the Supreme Court asserted dependence on existing doctrine ("This has been the unmistakable

holding of this Court for almost fifty years . . ."),[57] and noted their tradition of deference to local educational discretion.

To see a law course as foundational[58] requires conscious attention to expanding the traditional, but largely hermetic historicism of law to encompass a broader sociocultural perspective. An initial example may help clarify the orientation of this argument. Two quite important school law cases, Pierce v. Society of Sisters and Meyer v. Nebraska,[59] are hardy perennials in school law texts and, presumably, courses. If anything, these cases have become more relevant during the last decade as parents and private schools have challenged state regulation of nonpublic education.[60] Moreover, as substantive due process has crept back into the judicial lexicon, these two cases are precursors of the modern version of that doctrine.[61] One can argue that both are inescapably part of school law, at least for constitutionally-oriented courses.

It is my impression, however, that these cases require substantial historical grounding to be effective teaching devices. That is, the historical context of the legislation attacked in these cases is essential to students' full appreciation. With regard to Pierce, Tyack has written a fascinating analysis of Oregon's 1922 compulsory public education statute.[62] Students should understand the statutes in both cases with reference to the climate of post-World War I America. Equally interesting is Meyer's parallelism to the current "English Only" movement, reinforcing Novak's observation,[63]

> Historical process cyclically and slowly alternates--systole and dystole--between tendencies of unity and of diversity . . . . A system of social fears may govern such movements. When fears of division dominate, assimilation is encouraged. When fears of conformity dominate, diversity acquires partisans (pp. 260-261).

These cases have rich utility for viewing case law as related to its own time, and, across time, as a gauge of shifting sociopolitical emphases. They are peculiarly important, as well, for looking at the courts' pattern of institutional norms. Both cases are apparent anomalies: "liberal," humanistic outcomes from a Supreme Court that earned a special reputation as a social atavism and institutional overreacher. Moreover, the decisions turn on substantive due process, a doctrine of enduring controversy, no less so today when tied to the humanistic values of privacy.[64] Cases such as these make heavy demands on school law instructors. To teach them atomistically, as holdings, or even as precedents leading to and constraining future holdings is arguably a wasteful reductionism. The same observation would apply to virtually all categories of discrimination case law, as well as church-state issues in education. As to the last, it is uniquely challenging to give meaning to what Choper has called the "corrosive" precedents of the Establishment Clause,[65] but a good starting point is Justice Jackson's observation that Everson v. Board of Education reminded him of Byron's Julia who "whispering I will ne'er consent, consented."[66]

Gore Vidal pithily captured our national disinterest in historicism: "Americans tend to live in the present, with each generation different from the preceding one only in having more of the past to forget."[67] Of course, school law cannot escape entirely attention to precedent, but the need that I argue for is more comprehensive, an orientation towards the "social history" of school law.[68] This goal is particularly timely, as full social and intellectual histories of educational administration have only recently been published.[69]

The foundational perspective is appropriate to an associated function of school law: to respond to the reification of law, particularly in educational environments. It continues to surprise me that some students have such elevated expectations of the legal process, a view of law and justice as isomorphic, of courts as apolitical, and of judges as oracular. More pervasive, however, is a general unfamiliarity with the legal system and its traditions and norms. When judicial "values smuggling" is revealed or complicated empirical questions casually resolved through judicial notice,[70] students can react with shock, becoming cynical, proto-critical legal studies proponents.[71] Law is seen as random or, worse, completely corrupted by the evils of society, such as racism and sexism.

To some extent, this reaction is healthy, if easily overdrawn. For most respects, law should be peripheral to educational institutions, a background factor that shapes, but does not direct ultimate decisions.[72] Seeing law as emerging

from the larger culture, as part of the sociopolitical process can be liberating, much as shedding the myth of the nonpolitical public school allowed educators and communities to engage in legitimate conflict over educational policies.[73] That law is neither omniscient nor omnipresent can be an antidote to excessively risk aversive educational practice.[74] Such a goal may be especially important in teaching school law, as the course is an intense passage through conflicts and failed educational behaviors, a pathologic synecdoche of education, analogous to characterizing the whole body by a single diseased organ. Achieving or maintaining some balance during the course is difficult.

Another foundational perspective that can be highlighted in school law is the relationship between justice and law, or morality and law. There is a recrudescent interest in the moral ramifications and imperative of schooling and school management.[75] While the comforting, nineteenth century sense of schools as "museums of virtue" is unlikely to replace the more complex, pluralistic and conflictual social context of modern schools,[76] public education's explicitly inculcative mission ensures that educational policy processes will be burdened with powerful ethical and moral issues. Educational law mirrors these dilemmas, again confirming deTocqueville's observation that Americans tend to translate moral and social concerns into legal and political ones.[77]

Many students seek the "legal" way of resolving professional conundra, as a proxy for acting justly. The potential distinction, between what is legal and what is just, is particularly essential for educators because their organizational roles always imply authority and discretion over less powerful organizational actors.[78] For instance, much of school law reflects a judicial willingness to prescribe procedures while acquiescing to outcomes. Complex social and technical questions associated with educational processes are, to a great extent, left to the judgment of educational professionals. It is disheartening to see legalistic values pervade an arena such as school discipline, because law offers only procedural guides. Some other system of thought and social theory must inform substantive decision making, or "hard choices" simply will not be made, but will become default decisions.[79]

Selection of cases can force these dilemmas into the class dialogue. For instance, teacher dismissal cases represent a rich source of quite problematic social and professional questions. Teacher exemplar cases, now quite erratically decided by courts, raise difficult issues concerning the individual autonomy and privacy of teachers and the limits of school districts' privilege or duty to constrain nonpedagogic conduct.[80] More generally, teacher dismissal is often an organizational crisis, particularly when the teacher or teacher union contests the administrative judgment. Embedded in the facts of such cases are shoddy managerial practice and terrible managerial dilemmas (such as

responding to a board's intrusion into operations or sortie against a teacher).[81]

Just as there has been a reaction to the displacement in managerial and organizational study of human values and choice,[82] school law should not narrowly focus on result analyses or on constructing legally sanitized rule systems. Such tasks are sufficiently complicated that the even more challenging tasks of articulating and reflecting on the ethical and human implications of school practices can be diverted. Worse, the impression that law is a "natural" force, arising apart from society and somehow transcendent to it, reinforces a feeling that educators have often voiced of being controlled and deprived of meaningful choices.

Educating School Administrators

The ultimate measure of a school law course will be its contribution to programs in an education college. Traditionally, school law texts have begun by disclaiming any intention of making educators into lawyers. The rationale for such coursework has normally been couched in terms of improving professional decision making or informing educators about their legal duties or responsibilities. These texts are, for the most part, descriptive. Yet, to penetrate the meanings of judge-made doctrine, to move from comprehension of rules to contextual application necessarily involves the instructor and students in more complex and ambiguous cognitive processes. March has argued that the basic function a university can serve in training

administrators is training of the intellect.[83] He proposes a set of five analytical skills that should be the focus of the university's efforts, many of which must be simultaneously employed in handling a professional dilemma. The cognitive demand, as well as the problems encountered, are taxing.

Legal education prides itself on teaching an analytical process, rather than mere content. The first year of legal education is to reform the students' intellect, driving them from "heads full of mush" to thinking like a lawyer.[84] To some extent, that mode of thinking is merely a conscious, rigorous model of what Argyris has described as the "theories of action" by which we all guide our lives.[85] He proposes that human actions are based on causal theories that depend on "if . . . then" propositions. Such propositions, anchored in complex language, are the core of legal reasoning. Thus, there is an experientially familiar quality to exposition of cases in law.

There is also a strong possibility that the complex challenge of mastering this reasoning process will displace competing, often contradictory forms of professional knowledge. Education students in school law are rarely neophytes professionally; they will usually carry a body of informal and formal knowledge on how schools work.[86] Yet, in analyzing a "legal" issue, such as teacher dismissal, such knowledge is often ignored. The organizational difficulties in proving incompetence and the impact on all teachers' morale when a peer is charged with insubordination may not play an explicit role in the case

analysis. Students may propose a solution in solely legal terms that accepts appalling social assumptions or ignores virtually insurmountable organizational complexities. To some extent, then, the instructor must focus on keeping the education in education law, as Reutter put it.[87]

Among reformers of education colleges, including administrative programs, there is a general agreement that educators must be prepared to operate in a complex setting, fulfilling multiple tasks, driven by ambiguous goals.[88] One conceptualization of the necessary professional response calls for "reflectivity,"[89] building on multifaceted, if sometimes tacit knowledge structures and requiring multiple intellectual and experiential resources in decision making. Yet, academic programs have a tendency towards entropy to the smallest discrete unit, the course.[90] Faculty are prone to develop and present coursework from a relatively isolated perspective; organizational interdependence is not a powerful variable in the academic workplace. As teaching school law has become dominated by lawyerish, outsider perspectives, the possibility that the course will be decoupled from the rest of the curriculum is increased.[91]

There are obvious costs associated with the perspective advanced here, although, as one reviewer of my proposal noted, the argument is generic to coursework in educational administration. We should view all of our courses as part of a whole, because each course needs to make an unique and, at the same time, connective contribution. That is, courses should be

synergistic, rather than incremental, both internally and in relation to other courses in the program.[92] At a minimum, then, coverage will be affected. Conversely, school finance courses can certainly cover the finance cases, and other elements of school law will or can be delegated (properly) to other courses (for the argument of course integration attaches to those courses as well).

These goals imply program coordination and planning, imposing some collegial demands on time and territoriality, and, for the school law professor, a need to prepare and then infuse the course with a variety of perspectives and content. The ultimate course product should provide a useful analytic discipline, and reinforce a perspective of educators as responding to external and internal factors, multiple variables and interpretations, conflicting interests, the need for careful preparation and regularity in process. To achieve such an outcome will require the conscious integration of all program coursework, including law. Rather than school law, as Garber said, "coming into its own,"[93] it needs to become a fully interactive, contributing part of the whole.

Endnotes

1. I am a lawyer, but many school law faculty are not. Zirkel indicates that "approximately 80% of the faculty members currently teaching education law in schools or colleges of education do not have a law degree." P. A. Zirkel, "Research in Education Law," Education Law Reporter 19)(1986): 475-481, p. 476. Also I have not ever been a public school administrator. These two personal factors undoubtedly shape my experience as a school law instructor, and may have contributed to addressing a circumscribed, rather than general phenomenon. However, the argument proceeds from structural assumptions regarding school law and its role, rather than personal ones.
2. One indicator of this extensive interface is the nature of school law texts, which are normally quite long and cover the legal implications of seemingly every school-based behavior.
3. Zirkel, "Research in Education Law," p. 478.
4. My own experience in receiving frequent calls to speak in colleagues' classes is probably a common one, but unlike other school law people, perhaps, my college offers no law oriented courses to preservice teachers or graduate students other than in administration (although administration law courses are available as electives).

5. The most aptly titled article about legal education may be J. B. Taylor's "Law School Stress and the 'Deformation Professionelle,'" Journal of Legal Education 27(1975): 251-267. Susan Phillips, an anthropology professor who spent a year as a fulltime law student, has written a most engaging article about her experience, "The Language of Socialization of Lawyers: Acquiring the 'Cant,'" in Doing the Ethnography of Schooling, G. Spindler, ed. (New York: Holt, Rinehart & Winston, 1982).

6. T. S. Eliot, "The Love Song of J. Alfred Prufrock,: Collected Poems (New York: Harcourt, Brace, 1934, 1936) pp. 16-17. This imagery is overly bleak, perhaps, as lawyers in an education college possess the social and institutional status of a "major" profession. Cf., N. Glazer, "The Schools of the Minor Professions," Minerva 12(1974): 346-364.

7. See, e.g., G. Cawelti, "Training for Effective School Administrators," Educational Leadership (February 1982): 324-329. Moreover, practitioner surveys on important information for administrators invariably cite law. See, e.g., L. O. Pellicer et al., The Evolution and Training of School Principals (Columbia, SC: FIPSE, 1981) pp. 28-30 (ERIC Doc. No. ED218707); P. A. Zirkel and W. R. Huges, Jr., "Educational Research Relating to Training and School Law," Nolpe Notes 20, 12(1985): 3-5. There is an equally familiar tradition of demonstrating the inadequacies and inaccuracies of educational professionals' knowledge of school law. E.

g., E. J. Ogletree and N. Lewis, "School Law: A Survey of Educators," DePaul Law Review 35(1985): 259-326. An interactive factor in maintaining law in administrative programs is state administrative certification requirements. See, e.g., L. M. Cornett, The Preparation and Selection of School Principals (Atlanta: SREB, 1983). However, in a period when "instructional leadership" is the hallmark of administrative preparation, law could seem increasingly ancillary to "important" issues. For example, a recent, wideranging discussion of administrative training mentions legal knowledge perhaps once in an entire book. See J. Murphy and P. Hallinger (eds.) Approaches to Administrative Training (Albany: SUNY Press, 1987).

8. The professional literature of disaffection with law and its effects on school is quite large. See, e.g., E. T. L. Luty, "The Dilemmas School Administrators Face in Dealing with Termination and Free Speech Activities," Nolpe Notes 21, 12(1986): 5-8; G. H. Daniel "When 'Legalism' Gains a Foothold in Schools, Leadership Takes a Hike," The American School Board Journal 172, 10(1985): 28-29. For a response to these perspectives, see D. M. Sacken, "School Abuses Often Are What Cause Outside Intervention in Education," The American School Board Journal, 173, 11(1986): 40-41. For a more extensive critique of legalization, see A. E. Wise, Legislated Learning (Berkeley: University of California, 1979).

9. There is a numbing feeling associated with the shared disregard of the legal profession that is reflected among educators. One is inclined either to apologize or to explain that being a lawyer was a caprice of youth that, like Lady Macbeth's damned spot, will not come off.

10. D. Tyack, T. James, and A. Benavot, Law and the Shaping of Public Education, 1785-1954 (Madison, WI: University of Wisconsin Press, 1987). See also, D. Tyack, "Toward a Social History of Law and Public Education," in School Days, Rule Days, D. N. Kirp and D. N. Jensen, eds. (Philadelphia: Falmer Press, 1986), pp. 212-237. See also, D. Tyack, "Toward a Social History of Law and Public Education," in School Days, Rule Days, D. N. Kirp and D. N. Jensen, eds. (Philadelphia: Falmer Press, 1986), pp. 212-237.

11. M. C. Nolte, "Teaching School Law," in School Law Update 1986, T. N. Jones and D. P. Semler, eds. (Topeka, KS: NOLPE, 1987), 247-250.

12. E. Gellhorn and B. B. Boyer, "Government and Education: The University as a Regulated Industry," Arizona State Law Journal 1977(1977): 569-597.

13. L. O. Garber, "School Law in Retrospect," in 1959 Yearbook of School Law, L. O. Garber, ed. (Danville, IL: Interstate Printers and Publisher, Inc., 1959), pp. 157-171.

14. 347 U.S. 483 (1954).

15. N. J. Pitner, Training of the School Administer: State of the Art (Eugene: Center for Educational Policy and Management, 1982), p. 12.

16. Garber, "School Law in Retrospect," p. 162-163; M. L. Ware and M. K. Remmlein, School Law (Danville, IL: Interstate Printers and Publishers, Inc., 1979), pp. v-ix.

17. In part, this conclusion is based on a review of several school law texts. The following texts were reviewed in preparation to writing this paper:

> M. G. Yudof, D. L. Kirp, T. vanGell, and B. Levin, Educational Policy and the Law: Cases and Materials (Berkeley, CA: McCutchan, 1982); F. R. Kemerer and K. L. Deutsch, Constitutional Rights and Student Life: Value Conflict in Law and Education (St. Paul, MN: West, 1979); K. Alexander and M. D. Alexander, American Public School Law (St. Paul, MN: West, 1985); E. E. Reutter, Jr., The Law of Public Education (Mineola, NY: Foundation Press, 1970, 1985); S. R. Goldstein and E. G. Gee, Law and Public Education: Cases and Materials (Indianapolis, IN: Michie/Bobbs-Merrill, 1980); M. L. Ware and M. K. Remmlein, School Law (Danville, IL: Interstate Printers and Publishers, 1979); M. W. La Morte, School Law: Cases and Concepts (Englewood Cliffs, NJ: Prentice-Hall Inc., 1982); W. D. Valente, Law in the Schools (Columbus, OH: Merrill, 1987); M. S.

Sorgen, W. A. Kaplan, P. S. Duffy and E. Margolin, State, School and Family: Cases and Materials on Law and Education (New York: Matthew Bender, Inc., 1979); M. M. McCarthy and N. H. Cambron, Public School Law: Teachers and Students' Rights (Boston: Allyn and Bacon, 1981); L. Fisher and G. P. Sorenson, School Law for Counselors, Psychologists, and Social Workers (New York: Longman, 1985); L. J. Peterson, R. A. Rossmiller, and M. M. Volz, The Law and Public School Operation (New York: Harper and Row, 1978); and T. van Geel, The Courts and American Education Law (Buffalo: Prometheus, 1987).

These texts vary in one key way: whether they are essentially casebooks or treatises. In both cases, these books are quite similar to law school texts; several advertise themselves as appropriate for that use.

18. I no longer have current information on this issue, but read several years ago that Reutter's The Law of Public Education was the most widely adopted text on the market. Most of the texts listed in note 17 do have some edited cases.

19. Donald Willower and his students have been the most meticulous chroniclers of principals' work lives. See J. T. Kmetz and D. J. Willower, "Elementary School Principals' Work Behavior," Educational Administration Quarterly 18, 4(1982): 62-78; W. J. Martin and D. J. Willower "The

Managerial Behavior of High School Principals," Educational Administration Quarterly 17, 1(1981): 69-90. More administration texts are beginning to make use of "case" formats as well. See J. M. Lipham, R. E. Rankin and J. A. Hoeh, The Principalship (New York: Longman, 1985); and R. B. McPherson, R. L. Crowson, and N. J. Pitner, Managing Uncertainty (Columbus, OH: Charles E. Merrill, 1986).

20. P. A. Zirkel and W. R. Hayes, Jr., "Educational Research to Training in School Law," p. 4. Of course, the probability of a principal encountering a Tinker-esque case raising fundamental constitutional principles is not particularly high compared with the more chronic "legal" issues (budgetary matters or local or state policies for teacher nonrenewal). In national texts, however, it is necessary to focus on transnational issues, such as First Amendment problems (which may be more interesting and fun for faculty to teach).

21. My most enduring memory from legal education capturing the tentativeness of legal answers occurred in torts. After being continuously elusive in indicating how fact changes would alter litigation outcomes, the professor finally responded to student pleas for some answer to the constant "what ifs" he posed by saying: "Well, I suppose it would all depend on whether you could get it to a jury." That was as close to certainly as the class ever got.

22. Ware and Remmlein offer this rationale in the preface to their text, "Experienced teachers who have had a well-rounded school-law course can serve more efficiently in the profession." Ware and Remmlein, School Law, p. vi. This rationale must be characterized as an article of faith.

23. See the texts listed in note 17 supra.

24. There is some variation in this characteristic. Valente's text, for instance, has several tables comparing state standards for such topics as admission and attendance requirements and teacher personnel policies. See Valente, Law in the Schools, pp. viii-ix.

25. Garber, "School Law in Retrospect," pp. 162-163.

26. One might observe that teaching statutory law is altogether more stultifying than teaching cases, each of which represents a human drama and conflict. However, scholarship on the passage of such statutes can be quite interesting, although it may traditionally "belong" in politics of education or policy analysis courses. See, e.g., J. Tweedies, "The politics of legalization in special education reform," in Special Education Policies, J. G. Chambers and W. T. Hartman, eds. (Philadelphia: Temple University, 1983). Statutes would normally require an instructor to assemble and update frequently a course supplement.

27. Creating local law materials is essential, I think, for more pragmatic students, who want the smallest picture necessary and prefer checklists of rules or procedures. That is the

"value added" by school law and presumably lies behind the criticism offered by administrators in one dissertation that courses "only minimally met their needs, causing them instead to rely on district counsel." V. M. Einstein, The Nature and Role of School Law in Public School Administration (1984), cited in Zirkel and Huges, "Educational Research Relating to Training in School Law," p. 4. The complaint that school law left a role for district counsel mirrors the more pervasive complaint respecting the "practicality" of virtually all professional education, and is perhaps the most frustrating objection that university faculty must hear.

28. Zirkel, "Research in Education Law"; M. G. Yudof, "Educational Research Relating to School Law: An Appraisal," Nolpe Notes 21, 7(1986): 1-3; and "The Future of Law-and-Education Research," New York University Education Quarterly, XI(Fall 1979): 10-15.

29. For a discussion of these early studies on noncompliance with school prayer decisions, see D. R. Reich, "The Impact of Judicial Decision Making: The School Prayer Cases," in The Supreme Court as Policymaker: Three Studies on the Impact of Judicial Decisions, D. H. Everson, ed. (Carbondale: Southern Illinois University, 1968); and K. M. Dolbeare and P. E. Hammond, The School Prayer Decisions (Chicago: University of Chicago, 1971). The first systematic attempt at theory building was S. L. Wasby, The

Impact of the United States Supreme Court (Homewood, IL: Dorsey, 1970).

30. A recent example of impact study is K. Moss, "The Catalytic Effect of a Federal Court Decision on a State Legislature," Law and Society Review 19(1985): 147-157. For a general review of such research, see H. S. Lufler, "Compliance and Courts," in Review of Research in Education 8, D. Berliner, ed. (Washington: AERA, 1980). The study of implementation, normally associated with institutional response to legislative demands is a diverse and growing domain of scholarship. For theoretical perspectives on this research, see R. F. Elmore, "Implementation of Federal Education Policy: Research and Analysis," in Research in Sociology of Education and Socialization 3, R. G. Corwin, ed. (Greenwich, CN: JAI Press, 1982), and W. H. Clune, "A Political Model of Implementation and Implications of the Model for Public Policy, Research and the Changing Role of Law and Lawyers," Iowa Law Review 69(1983): 47-125.

31. Looking at aggregate data leads to meaningful predictions or generalizations about court outcomes or effects. It also emphasizes the contingent nature of legalization effects.

32. Cf., M. G. Yudof, "Liability for Constitutional Torts and the Risk-Averse Public School Official," Southern California Law Review 49, 6(1976): 1322-1399.

33. The literature of "effective administrators," while so defuse as to suggest almost all things, does have a recurrent focus on "proactive" versus "reactive" administrators. One interpretation of the difference between those two categories is a principal's perception of retained control over school events and educational outcomes, or otherwise stated, a sufficient measure of self efficacy. Cf., G. R. Austin and S. P. Holowenzak, "An Examination of 10 years of Research on Exemplary Schools," in Research on Exemplary Schools, G. R. Austin and H. Garber, eds. (Orlando, FL: Academic Press, 1985); D. L. Clark, L. S. Lotto, and T. A. Astuto, "Effective Schools and School Improvement: A Comparative Analysis of Two Lines of Inquiry," Educational Administration Quarterly 20(1984): 41-68.

34. That would be unsurprising, as legalization enhances and is compatible with bureaucratic structures. See P. Nonet and P. Selznick, Law and Society in Transition (New York: Harper, 1978), particularly pp. 53-72; J. F. Handler, The Conditions of Discretion (New York: Russell Sage Foundation, 1986). For a discussion of the consequences of legalization and its relationship with formalization processes within schools, see M. G. Yudof, "Legalization of Dispute Resolution, Distrust of Authority, and Organization Theory: Implementing Due Process for Students in the Public Schools," Wisconsin Law Review 1981(1981): 891-923.

35. It is difficult to select "fairly" from this literature, but three illustrative sources are: D. L. Clark, S. McKibbin and M. Malkas, eds. Alternative Perspectives for Viewing Educational Organizations (San Francisco: Far West Laboratory, 1981); W. Firestone, "Images of Schools and Patterns of Change," American Journal of Education, 88(1980): 459-487; and M. T. Miles, "Mapping the Common Properties of Schools," in Improving Schools, R. Lehming and M. Kane, eds. (Beverly Hills, CA: Sage, 1981) pp. 42-114. An interesting approach to school districts as political systems is S. Bacharach and S. Mitchell, "The generation of practical theory: schools as political organizations," in Handbook of Organizational Behavior, J. W. Lorsch ed. (Englewood Cliffs, NJ: Prentice-Hall, 1987) pp. 405-418.
36. K. Weick, "Educational Organizations as Lossley Coupled Systems," Administrative Science Quarterly 21(1976): 1-19.
37. D. J. Willower and M. W. Stetter, "School Principals as Threshold Guardians: An Exploratory Study," Alberta Journal of Research 31(1984): 2-10.
38. D. C. Lortie, Schoolteacher (Chicago: University of Chicago, 1975).
39. E. M. Bridges, The Incompetent Teacher (Philadelphia: Falmer Press, 1986).
40. As Hoyle argues, "In order to make possible the rising expectations, right or wrong, of those who work in education, it becomes increasingly necessary for all

administrators and supervisors to systematically improve the performance levels of those employed in education, including the administrators themselves." J. R. Hoyle, "Programs in Educational Administration and the AASA Preparation Guidelines," Educational Administration Quarterly 21(1985): 71-93 p. 82. Cf., S. C. Batagiannis, "The School District Is Not Married to Mediocrity," Education Law Reporter 26(1985): 939-946.

41. See, e.g., B. C. Jentz and J. W. Wofford, Leadership and Learning (New York: McGraw-Hill, 1979), particularly chapter 12 and 13.

42. Kmetz and Willower, "Elementary School Principals' Work Behavior"; Martin and Willower, "The Managerial Behavior of High School Principals." See also, C. Salley, R. B. McPherson and M. E. Baehr, "What Principals Do: A Preliminary Occupational Analysis," in The Principal in Metropolitan Schools, D. A. Erickson and T. L. Reller, eds. (Berkeley: McCutchan, 1979).

43. See, e.g., S. B. Bacharach and S. C. Conley, "Uncertainty and Decision-making in Teaching: Implications for Managing Professionals" (Paper prepared for Conference on Restructuring Schools for Quality Education, San Antonio, Texas, 1987); W. Doyle and K. Carter, "Choosing the Means of Instruction," in Educators' Handbook, V. Richardson-Koehler, ed. (New York: Longman, 1987).

44. S. M. Johnson, Teacher Unions in Schools (Philadelphia: Temple University, 1984).

45. Collective bargaining aside, the principalship literature, by and large, describes the role as highly discretionary and impactive on school processes, even outcomes. E.g., A Blumberg and W. Greenfield, The Effective Principal: Perspectives on School Leadership (Boston: Allyn & Bacon, 1980); R. S. Barth, Run School Run (Cambridge: Harvard University, 1980).

46. L. M. Donnell and A. Pascal, Organized Teachers in American Schools (Santa Monica: Rand Corporation, 1979) p. ix; C. Kerchner and D. Mitchell, The Dynamics of Public School Collective Bargaining and Its Impact on Governance, Administration and Teaching (Rep. G-79-0038) (Washington, DC: National Institute of Education, 1981).

47. K. M. Borman and J H. Spring, Schools in Central Cities (New York: Longman, 1984) pp. 96-99.

48. The literature on student discipline systems and their effects is voluminous and can be used with discipline cases quite usefully. Also, a particularly full evaluative literature has emerged regarding P.L. 94-142 and Title I. The case law accompanying P.L. 94-142's implementation has been equally voluminous, creating an excellent opportunity for interplay between aggregate empirical research and case analyses. A particularly good analytical review of P.L. 94-142's implementation is W. H. Clune and M. H. Van Pelt, "A

Political Method of Evaluating the Education for All Handicapped Children Act of 1975 and the Several Gaps of Gap Analysis," Law and Contemporary Problems 48(1985): 7-62. See also, Handler, The Conditions of Discretion, chapters 4-5. For a recent analysis of the implementation of Title I, see J. B. Fraatz, The Politics of Reading (New York: Teachers College Press, 1987), and for a more traditional program evaluation, see M. Kirst and R. Jung, The Utility of A Longitudinal Approach in Assessing Implementation: A Thirteen Year View of Title I, ESEA (Stanford: Institute for Research on Educational Finance and Governance, Program Report No. 80-B18, 1980).

49. See, e.g., K. D. Peterson, "Mechanisms of Administrative Control over Managers in Educational Organizations," Administrative Science Quarterly 29(1984): 573-597; K. D. Peterson, J. Murphy and P. Hallinger, "Superintendents' Perceptions of the Control and Coordination of the Technical Core in Effective School Districts," Educational Administration Quarterly 23(1987): 79-95. Cf., M. W. Kirst, Who Controls Our Schools (New York: W. H. Freeman, 1984).

50. Yudof, Kirp, van Geel and Levin, Educational Policy and the Law. For a book which collects a series of essays that could complement a traditional case text, see D. L. Kirp and D. N. Jensen, School Days, Rule Days (Philadelphia: Falmer Press, 1986).

51. The last information that I have seen on text adoption, a survey circulating several years ago, indicated infrequent adoption, at least in education colleges.

52. It is uncertain whether students both retain and then cannot use earlier coursework in a synthesizing manner. Such an approach also depends on programs' sequencing coursework. Moreover, the legal-empirical literature, increasing in volume, is not likely to be discussed in nonlaw courses. A good example is aggregate data studies on school discipline practices, unlikely to be scrutinized in classroom management courses, as the unit of analysis is different (classroom versus building or system). Exemplary studies on discipline include L. E. Teitelbaum, "School Discipline Procedures: Some Empirical Findings and Some Theoretical Questions," Indiana Law Journal 58(1983): 547-596, and E. J. Hollingsworth, H. S. Lufler, and W. H. Clune III, School Discipline, Order and Autonomy (New York: Praeger, 1984). For a good case study of the litigation culminating in the Supreme Court's decision "Goss v. Lopez: The Principle of the Thing," in In the Interest of Children, R. H. Mnookin, ed. (New York: W. H. Freeman, 1985). Parenthetically, it draws on an extensive study of the events around Goss in Kemerer and Deutsch, Constitutional Rights and Student Life: Value Conflict in Law and Education.

53. Administrators have access to multiple sources of information on school law. Many professional journals, such as Phi Delta Kappan, have a monthly section on school law issues, as well as featured articles. Also, school district policy documents, including student discipline codes, tend to be quite elaborate and explicit, and often are quite legalistic in tone. Larger school districts increasingly are adding inhouse counsel, as opposed to using only outside lawyers. These "domesticated" professionals may provide both inservices and ad hoc advising for administrators. Finally, districts still bring in outside experts for inservice, an experience undoubtedly all university-based school law instructors have shared. One might note the current popularity of "preventive law" formats, the school law counterpart to Essential Elements of Instruction.

54. After teaching an inclusive survey course for several years, covering torts to fundamental rights, I finally bifurcated my school law course. One remains relatively traditional, focusing on "national" issues, with a constitutional and federal law orientation. Major omissions include tort liability, finance cases (except Rodriguez), general governance issues (property questions, open meetings, etc.), and parochaid. The syllabus for this course, EDFA 675 The Law and American Education, is attached to this paper as an appendix. The syllabus is not indicative of the arguments made here, but the historical nature of the caselaw, as well

as its rights orientation, permits inclass discussion of the sociocultural context and the histories of these cases. A second course has been emerging for several years. This spring its focus will be teachers' employment relationship with the school, and I will attempt to integrate legal and nonlegal materials and perspectives. A very tentative outline/syllabus for this course, EDFA 614 State School Systems and the Law is enclosed in the appendix (N. B. I am not responsible for the title; as with many faculty, I inherited some course titles of uncertain origin).

55. Quoted in Reich, The Impact of Judicial Decision Making: The School Prayer Cases, p. 44.

56. Within legal education and scholarship, there have been efforts periodically to enrich the instructional process with broader perspectives and to avoid a "technician of the law" orientation. Examples include the empiricist movement associated with Yale Law School during the 1920s and 1930s, and the critical legal studies movement. Neither has been welcomed with universal enthusiasm. Cf., P. C. Kissam, "The Decline of Law School Professionalism," University of Pennsylvania Law Review 134(1986): 251-324. The educational administration analog to critical legal studies is critical analysis or theory, best represented in W. Foster, Paradigms and Promises (Buffalo: Prometheus, 1986).

57. 393 U.S. 503, 506(1969). Justice Black sharply disagreed with the majority's observation, denying that Tinker represented continuity with precedent. Ibid., at p. 744.

58. I am indebted to my colleague Gary Fenstermacher for the insight that educational law courses might best be associated with foundational coursework.

59. 268 U.S. 510(1925) and 262 U.S. 390(1923), respectively.

60. See, e.g., D. M. Sacken, "Regulating Nonpublic Education: A Search for Just Law and Policy," American Journal of Education (forthcoming). There is an enormous effusion of scholarly writing on this general topic; much of it is cited and discussed in my article, but I follow the distinctive tradition of citing myself, if possible.

61. Courts will now acknowledge that substantive due process claims can be made, and will entertain them, but they still express discomfort, citing the ignominious history of substantive due process. An interesting incarnation of substantive due process has occurred in post-Ingraham v. Wright corporal punishment cases. Circuits are currently split over the availability of a substantive due process cause of action for excessively brutal incidents involving corporal punishment. Recently, the Tenth Circuit has recognized this cause of action. Garcia by Garcia v. Miera, 817 F.2d 650(10th Cir. 1987). There is a substantial empirical and theoretical literature on the effects of corporal punishment, as well as a hortatory literature of

the ethical and moral implications of this disciplinary measure. It is a good heuristic instructional topic.

62. D. Tyack, "Compulsory Public Schooling and the Perils of Pluralism: The Case of Oregon, 1922," in Law and the Shaping of Education, 1785-1954, D. Tyack, T. James, and A. Benavot, eds. (Madison: University of Wisconsin, 1987), pp. 177-192.

63. M. Novak, "Social Trust," in Parents, Teachers and Children (San Francisco: Institute for Contemporary Studies, 1977), pp. 257-278.

64. Cf., J. Nowak, R. Rotunda, and J. Young, Constitutional Law, 3d. ed. (St. Paul: West, 1986) §§ 14.26-14.30. It is useful to teach Justice Holmes' dissent in Meyer, unfortunately omitted in virtually all texts, because it raises the tradition of judicial deference to legislative processes against a radically conservative doctrine. Holmes' opinion can be juxtaposed against Burger's dissent in Doe v. Pylyer, urging restraint against a more liberal decision.

65. J. H. Choper, "The Religion Clauses of the First Amendment: Reconciling the Conflict," University of Pittsburgh Law Review 41(1980): 673-701.

66. A particularly helpful tool for developing a breadth of understanding of the Establishment Clause is L. Levy, The Establishment Clause (New York: MacMillan, 1987).

67. G. Vidal, 1876 (New York: Ballantine, 1976), p. 9.

68. Cf., Tyack, James, and Benavot, Law and the Shaping of Public Education, 1785-1954.

69. See D. Tyack and E. Hansot, Managers of Virtue (New York: Basic Books, 1982), and R. F. Campbell, T. Fleming, L. J. Newell, and J. W. Bennion, A History of Thought and Practice in Educational Administration (New York: Teachers College, 1987). Cf., G. S. Johnston and C. C. Yeakey, Research and Thought in Administrative Theory: Developments in the Field of Educational Administration (Lanham: University Press, 1986).

70. The paradigm for a hard case ostensibly resolved through social science is Brown v. Board of Education (and its problematic determination that separate education is inherently unequal). The use of social science by courts is a topic that has generated a rich literature, much of it associated with school desegregation and identifying discrimination and its effects. A particularly well known set of essays is R. Rist and A. Anson, eds., Education, Social Science and the Judicial Process (New York: Teachers College, 1977).

71. It would probably be more accurate to say they become radical legal realists, viewing the law as a set of inconsistent outcomes tied to judicial preferences, but hidden behind a complex mask of doctrine. See note 56 supra.

72. There are obvious exceptions, occasions where law must come to the fore. Teacher dismissals and student expulsions are examples. Yet, the danger in such situations is that law

will dominate all other considerations.

73. See Tyack and Hansot, Manager of Virtue, Part III. Cf., C. Geertz, "Local Knowledge: Fact and Law in Comparative Perspective," in Local Knowledge (New York: Basic Books, 1983).

74. Yudof, "Liability for Constitutional Torts and the Risk-Averse Public School Official."

75. See, e.g., R. B. Kimbrough, Ethics (Arlington: AASA, 1985); M. A. Raywid, "Some Moral Dimensions of Administrative Theory and Practice," Issues in Education 4(1986): 151-166.

76. Tyack and Hansot, Managers of Virtue, p. 7.

77. Recent cases involving "secular humanism" and free exercise claims against public school curricula epitomize this enduring tendency. See Mozert v. Hawkins County Board of Education, 827 F.2d 1058 (6th Cir. 1987), and Smith v. School Commissioners, 827 F.2d 684 (11th Cir. 1987).

78. See generally, "Authority in Education," Teachers College Record 88(1986): 1-106.

79. The issue of continued use of corporal punishment is an instance where the Supreme Court refused, in Ingraham v. Wright, to resolve a complex educational and social issue which has long divided people, expressly preferring that such an issue be left to nonlitigative fora. For a similar argument regarding bilingual education, see D. M. Sacken, "A Choice for the People to Make: The Necessity of Legislative Reform of Arizona's Bilingual Policy," Arizona Law Review

26(1984): 79-124.

80. Cf., F. G. Delon, Legal Issues in the Dismissal of Teachers for Personal Conduct (Topeka, KS: National Organization on Legal Problems of Education, 1982).

81. See in the appendix to this paper my syllabus for EDFA 614, State School Systems and the Law. I will choose cases to illustrate the legal impact of varying managerial and board practices in relation to teachers.

82. Cf., Y. S. Lincoln, Organizational Theory and Inquiry (Beverly Hills, Sage, 1985), particularly Chapter 2; G. Morgan, Images of Organizations (Beverly Hills, Sage, 1986); and Foster, Paradigms and Promises.

83. J. G. March, "Analytical Skills and the University Training of Educational Administrators," The Journal of Educational Administration 12(1974): 17-44. For an application of these principles, with a focus on organizational change, see T. T. Saario, "Leadership and the Change Process," in The Dynamics of Planned Educational Change, R. E. Herriott and N. Gross, eds. (Berkeley: McCutchan, 1979), pp. 328-349.

84. The "heads of mush" reference comes from the inestimable Professor Kingsfield of The Paper Chase.

85. Argyris, as well as Donald Schon, has written from this perspective for many years, developing an increasingly complex set of theories aimed towards "action science" and "reflective practice," respectively. For a discussion of theories of action, see C. Argyris, Increasing Leadership

Effectiveness (New York: John Wiley & Sons, 1976), especially chapter one.

86. The knowledge may often be "practical," experiential, anecdotal, atheoretical and even tacit, but teaching professionals is undoubtedly quite different from teaching, for instance, undergraduate, preservice teachers about those issues. In the latter instance, instructors can presume knowledge of neither organizational context nor law. That might be a pedagogic advantage, of course.

87. E. E. Reutter, Jr., "Keeping Education in Education Law," in School Law Update 1986, T. N. Jones and D. P. Semler, eds. (Topeka, KS: National Organization on Legal Problems of Education, 1986), pp. 238-246.

88. Literature on the nature of managerial decision making illustrates the complexness of such a research topic and the tacit nature of much social knowledge. See, e.g., S. Srivastva and Associates, eds., The Executive Mind (San Francisco: Jossey-Bass, 1983); and M. H. Bazerman, Judgment in Managerial Decision Making (New York: John Wiley, 1986). For a small, but intriguing study of cognitive decision making processes among educational administrators, see H. W. Fraser and M. E. Anderson, "Administrative Decision Making and Quasi Decision Making: An Empirical Study Using the Protocol Method," Planning and Changing 13 (1982): pp. 204-213. Cf., P. C. Gronn, "Talk as Work: The Accomplishment of School Administration," Administrative Science Quarterly

28(1983): 1-21.

89. See D. A. Schon, The Reflective Practitioner (New York: Basic Books, 1983); and T. J. Sergiovanni, The Principalship: A Reflective Practice Perspective (Newton, MA: Allyn and Bacon, 1987).

90. For an interesting account of this entrophic process and a concerted response of program reconstruction at Stanford University, see L. Mayhew, Educational Leadership and Declining Enrollments (Berkeley: McCutchan, 1974).

91. If a school law expert, especially a lawyer, belongs to the faculty, legally-related aspects in other courses may go uncovered, though deference to the "expert" or to alleviate coverage crush. For instance, school finance cases, even the mini-Serrano v. Priest revolution, can be covered in school finance; one could argue that they are more logically covered there. If school law faculty end up teaching finance, as seems to be the case in some programs, the transfer is more easily made. For a text that integrates legal, ethical and social perspectives, see E. J. Haller and K. A. Strike, An Introduction to Educational Administration (New York: Longman, 1986). To a large extent, that text represents a full integration of the dimensions I am promoting here, but it also illustrates the problem of limited coverage. It is a text for an introductory course, not a law course, and may be more "balanced" in its triperspective presentation than a law course should be,

where law still would be the preeminent focus. The text does capture the synergistic quality of fixing educational problems with multiple perspectives.

92. Other commentators on the preparation of educational administrators have urged the enrichment of the curricular framework, particularly to break with narrowly instrumentalist aims. See, e.g., T. J. Sergiovanni, "A Social Humanities View of Educational Policy and Administration," Educational Administration Quarterly 16(1980): 1-19; J. Hills, "The Preparation of Administrators: Some Observations from the 'Firing Line'," Educational Administration Quarterly 11(1975): 1-20. Parenthetically, similar issues have been raised regarding legal education, F. A. Allen, "The New Anti-Intellectualism in American Legal Education," Mercer Law Review 28(1977): 447-462.

93. Garber, "School Law in Retrospect," p. 171. He went on to observe that "it has at last the same respectability accorded other fields such as business management and school finance." Ibid. Aided by a explosion of case law and legislation, school law has arguably eclipsed both business management and finance. The massive judicial and legislative output since the 1960s has created an enormous (and always expanding) body of materials from which to draw for school law courses. The size of major textbooks (and the price) is a good indicator, as is the proliferation of

specialized educational law texts (e.g. law and reading or for school psychologists or of the handicapped, etc.). The school law faculty member has benefitted in status, perhaps, but through increased specialization may have been too insulated with law. Eventually, school law courses might give way to courses organized under a more integrative concept, such as policy. Such a progression might be particularly appropriate in doctoral coursework.

APPENDIX

EDFA 675

Syllabus
Dr. D. M. Sacken

I. Compulsion in Schools: The Ordering of Liberty

1. Pierce (p. 221)
2. Yoder (p. 228)
3. W. Va. v Riddle (p. 235)
4. Duro (p. 239)
5. Dalli (photocopied)
6. Barnette (p. 202)
7. McCollum (p. 184)
8. Zorach (p. 186)
9. Schempp (p. 193)

II. Control of Content: Access to the Indoctrination Machine

1. Meyer (p. 225)
2. Epperson (p. 273)
3. McLean (p. 275)
4. Keefe (p. 260)
5. Pico (p. 263)
6. Mozert (photocopied)

III. Teacher and Student Rights: Aspects of Due Process

1. Due Process memo (photocopied)
2. Goss (p. 315)
3. McClain (p. 321)
4. O'Rourke (p. 298)
5. Klein (photocopied)
6. Ingraham (p. 302) (Additional notes memo/photocopied)
7. Tiffany (photocopied)
8. Bd. of Educ. Rogers, Ark. (photocopied)
9. Roth (p. 600)
10. Crane (photocopied)
11. Harrah I.S.D. (photocopied)

IV. Teachers and Students: Expressive Activities

1. Freedom of Speech and the Public Schools memo (photocopied)
2. Tinker (p. 326)
3. Guzick (p. 329)
4. Gambino (p. 339)
5. Trachtman (photocopied)
6. Student Coalition for Peace (photocopied)
7. Fraser (photocopied)
8. Pickering (p. 567)
9. Givan (p. 576)
10. Doyle (p. 572)
11. Bernasconi: (photocopied)
12. Gregory (photocopied)
13. Hickman (photocopied)

V. Teachers and Students: Dimensions of Privacy

1. Planned Parenthood (photocopied)
2. Overton (p. 352)
3. In re T.L.O. (p. 354) (Searches in Schools memo/photocopied)
4. Gaylord (p. 617)
5. Erb (p. 541)
6. Eckmann (photocopied)

VI. Discrimination and the Dilemmas of Equal Protection

1. Judicial Review of State Actions memo (photocopied)
2. Brown (p. 411)
3. Rodriquez (p. 726)
4. Plyler (p. 208)
5. Debra P. (p. 283) (Testing memo/photocopied)
6. Lau (p. 268)
7. Guadalupe Organization (photocopied)
8. Rowley (p. 377)
9. S-1 (p. 384) (Az. Att'y Gen. Op./photocopied)
10. Kruelle (p. 395)
11. Silvio (p. 399) (PL94-142 memo/photocopied)
12. Ambach (p. 535)
13. Patino (photocopied)
14. Civil Rights Div., Az. Dept. of Law (photocopied)
15. Danzl (p. 653)
16. Rankins (photocopied)

VII. The Nature of Liability: The Wages of Ignorance

1. Wood (p. 511) (Wood Update memo/photocopied)
2. Carey (p. 515)
3. Eckmann (again) (photocopied)

VIII. School Desegregation: The External Revolution

1. Griffin (p. 417)
2. Green (p. 421)
3. Swann (p. 433)
4. Keyes (p. 425)
5. Milliken (p. 441)

Syllabus EDFA 614: CONTROL OF THE TEACHING PROFESSION

I. Federal Impact on Teaching (nonconstitutional).

[N.B. This part of the course is least well formed, but my goal is to use cases and other materials that demonstrate how federal law can define or constrain teaching activities].

A. Special populations and teacher qualifications. I will probably use cases that demonstrate how specially protected groups lead to regulation of teaching through special training requirements or pedagogical arrangements.

--EG: the requirement that teachers "take account of" Black English in M. L. King Jr. Elementary School Children (431 F.Supp. 1324), and the minimal requirements for adequate training of bilingual education indicated in Casteneda v. Pickard (648 F.2d 989, 1012 et seq.) and case(s) out of special education or reading which focus on how services must be delivered.

B. With these cases, I will use some secondary literature, evaluating the organizational impact of those specialist teachers associated with federal mandates, and the complexities of the new decision making roles allocated to parents through these laws for resolving educational issues. I want to juxtaposition such analyses with the federal statute promising noninterference with the curriculum, focusing on the impacts of federal policy for schools and the teaching profession. Two possible selections are S. Kerr, "Generalists Versus Specialists" in Organization Behavior in School Districts, Bacharach & Mitchell, eds. (Praeger, 1981); and J. Fraatz "More of the Same: Reading Specialists and the Mobilization of Bias," chapter two of The Politics of Reading (Teachers College Press, 1987).

C. Finally, I may in this subsection use a few cases to illustrate the limits of the protective powers of law, even antibias legislation. I want people to consider the legitimacy of institutional "disempowerment" arguments. A plausible case would be Patino v. Dallas I.S.D. (486 (F.Supp. 226), an unsuccessful Title VII case, illustrating that antibias statutes need not shelter incompetents.

II. State Controls on Teaching

[N.B. I will consciously focus on Arizona's statutory and common law structures for regulating the teaching profession, but will also use comparative approaches to get students to consider the differential impacts of doctrinal and statutory variation].

A. Entry questions. The focus will be the certification (and decertification) process. In addition to cases, statutes and state board regulations focusing on certification, I will use the Texas litigation on teacher tests, as well as a recent article in Educational Research (Shepard & Kreitzer, "The Texas Teacher Test" August/September, 1987).

B. Control over the Teaching Profession. I will choose cases keyed to the effect of a state level administrative review board, which Arizona does not have, to show how that additional layer might impact local procedures and the nature of judicial review.

C. Other topics may include the secondary source analysis of the effects on classrooms of current state initiatives, particularly revived efforts to specify curriculum. I may use some focus on minimum competency testing, but most litigation has been exclusively constitutional in nature, which I want to avoid (so I may use a policy analysis of the consequences of MCTs). The difficulty here is finding any useful case law, rather than secondary source materials.

III. The Local District's Relationship with Teachers

A. Managing Teachers as Employees. The primary focus here will be the nature and magnitude of authority that managers have over teachers. Cases will be selected to cover the traditional grounds for dismissal. I will include necessary Arizona statutes, as well as comparative cases/statutes. For instance, Arizona has no "remediation" provisions except for incompetence. The insubordination cases in Arizona are particularly harsh as well. I suspect that this portion of the course will have a large number of cases.

B. There are at least three secondary source materials that I intend to use: E. Bridge's The Incompetent Teacher (Falmer Press, 1986); chapters from B. Jentz and J. Wofford's Leadership and Learning (McGraw-Hill, 1979 [probably chapters 12 & 13, focusing on the difficulties in working with a "problem" teacher]); and a selection from critical theorists' literature on teaching, probably H. St. Maurice, "Clinical Supervision and Power: Regimes of Instructional Management," in Critical Studies in Teacher Education, T. Popewitz, ed. (Falmer Press, 1987).

IV. The Institution of Collective Bargaining

A. The case law here is overwhelming, but essentially fungible in many respects. There are some essential Supreme Court cases that must be included, but primarily I will select cases that illustrate particular themes and/or have distinctive factual patterns. Scope of bargaining (particularly touching on evaluation and dismissal) and dispute resolution are obvious topics. Also, conflict between member and nonmember teachers (or fair representation issues) are essential (e.g., representation fees). A recent, quite interesting clash has involved conflicts between traditional union norms and various career ladders or development plans (i.e., Florida Teaching Profession v. Turlington, 490 So. 2d 142 [Fla. App. 1986]). Also, the effect of employee relations boards on local governance can be highlighted, normally in a strike case tied with an unfair labor practice claim. Finally, the role of unions in affirmative action issues, particularly in lay off situations, is a compelling topic.

B. As Arizona has no collective bargaining statute, the "law" is a bit elusive, primarily some A. G. Opinions and some inadvertent case law (e.g., cases enforcing collective bargaining provisions but avoiding questions of their legality). I will use my own article from 28 Arizona Law Review (1986), which discusses the state issues. Then, the secondary literature is increasingly rich. The work of Susan Moore Johnson (e.g., Unions in Schools) and Charles Kerchner and Stephen Mitchell will be used to probe the consequences of unions at the district and school level. I will probably conclude the readings with Kerchner and Mitchell's recent recommendation for a reconceptualization of educational bargaining, the educational policy trust agreement (see, e.g., their article in 86 Elementary School Journal 1 [1986]). Overall, I want to address both impact or efficacy issues and legitimacy questions.

V. Miscellaneous and Sum Up. I am not entirely certain what I will use here, except I may introduce Wise's "hyperrationalization" thesis. One secondary source that I will probably use is a recent paper by S. Conley and S. Bacharach, "Uncertainty and Decision-Making in Teaching: Implications for Managing Professionals," which takes the position that what we know about teaching as a profession should drive managerial perspectives and practices.

Thus, the overall theories that will shape the course are the highly regulated nature of teaching, as well as the "nested" quality of those regulations (i.e., multiple, overlapping controls by various levels of government), the effects of various structures of regulation on the degree of control exerted by competing governmental bodies (local and state board, reviewing commissions), the courts' roles as arbiter, protector and enforcer, and, perhaps, what we can learn about health from the pathology of teacher-manager/district relationships.